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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,909	02/07/2002	Hideharu Nakajima	112857-317	2300

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BELL, BOYD & LLOYD, LLC  
P. O. BOX 1135  
CHICAGO, IL 60690-1135

[REDACTED] EXAMINER

WILLE, DOUGLAS A

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER  
2814

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/071,909	NAKAJIMA ET AL.	
	Examiner Douglas A Wille	Art Unit 2814	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>11 June 2002</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL.                    2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
<b>Disposition of Claims</b>			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-27</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) <u>15-27</u> is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-6 and 10-14</u> is/are rejected.</p> <p>7)<input checked="" type="checkbox"/> Claim(s) <u>7-9</u> is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
<b>Application Papers</b>			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input checked="" type="checkbox"/> The drawing(s) filed on <u>07 February 2002</u> is/are: a)<input checked="" type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p>			
<p>11)<input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved by the Examiner.</p> <p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p>			
<p>12)<input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
<p>13)<input checked="" type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input checked="" type="checkbox"/> All    b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input checked="" type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
<p>14)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).</p> <p>a)<input type="checkbox"/> The translation of the foreign language provisional application has been received.</p>			
<p>15)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>			
<b>Attachment(s)</b>			
<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.</p>		<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____</p>	

## **DETAILED ACTION**

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1 - 14, drawn to a device, classified in class 257, subclass 88.

II. Claims 15 - 27, drawn to a method, classified in class 438, subclass 34.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the device could be formed with the insulating layer having a predetermined thickness and not requiring thinning.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jeffrey Canfield on 6 January 2003 a provisional election was made without traverse to prosecute the invention of I, claims 1 - 14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15 – 27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 - 6 and 10 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibeault et al in view of Hayafuji et al.

6. With respect to claims 1 and 5, Thibeault et al. show a LED array (see cover Figure and column 5, line 9 et seq.) with a plurality of light emitting devices 18, 14, 16 on a substrate 28 with an insulating layer 23 in which the LED is embedded and the upper end of the LED is exposed and electrode 24 is attached. Thibeault et al. do not show thinning of the insulator but this is a processing limitation and carries no weight in a claim drawn to a device and similar remark is addressable to claim 5. Thibeault et al. do not show that the device can be used as a display but Hayafuji et al. show a similar device (see cover Figure and column 4, line 30 et seq.) in which the emitters can be individually addressed (column 6, line 65) and is inherently usable as a display and it would have been obvious to individually address the Thibeault et al. elements as shown by Hayafuji et al. to provide another use for the array.

7. With respect to claims 2 and 3, Thibeault et al. show the insulation is SiN or SiO<sub>2</sub> (column 6, line 37) but the use of other standard semiconductor industry insulators such as polyimide or spin-on glass would have been obvious.
8. With respect to claim 4, Thibeault et al. show the insulation is SiN or SiO<sub>2</sub> (column 6, line 37) and is deposited by evaporation or sputtering although the method of formation is a process limitation and carries no weight.
9. With respect to claim 6, Hayafuji et al. shows reflector layers 11 and 16 with downward emission (see cover Figure).
10. With respect to claim 10, the emission from the GaN device would be monochromatic.
11. With respect to claims 11 - 14, layers 18, 14 and 16 are first type, active and second type layers and there is a single metal layer. Note the above comments with respect to process limitations.

*Allowable Subject Matter*

12. Claims 7 - 9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is known in the art that tapered side surfaces can increase the output of an LED and Hata et al. show the growth of GaN thru a mask that provides a triangular shaped structure but it is not believed to be obvious to combine this reference with those quoted above.

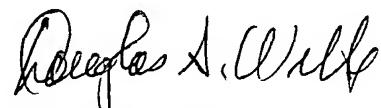
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (703) 308-4949. The examiner can normally be reached on M-F (6:15-3:45).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (703) 308-4918. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Douglas A. Wille  
Patent Examiner

January 23, 2003